In the High Court of Punjab and Haryana, Chandigarh.

C.W.P.No.8026 of 2006

Date of Decision: 22.3.2006

Baljeet Singh

…Petitioner.

Versus

The Managing Director, Pepsu Road Transport Corporation, Patiala and Another.

…Respondents.

CORAM: HON'BLE MR.JUSTICE M.M.KUMAR
HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr.R.S.Chauhan, Advocate
for the petitioner.

Mr.H.N.S.Gill, Advocate
for the respondents.

JUDGMENT

M.M.KUMAR, J. (ORAL)

The prayer made by the petitioner in the instant petition is that order dated 1.2.2006 (Annexure P5) be quashed to the extent that service rendered by the petitioner from 15.7.1972 till 1.6.1979 has not been considered as qualifying service for pension and other benefits. It is undisputed that the petitioner was appointed on regular basis on 15.7.1972 as Driver in the respondent-Corporation against a sanctioned post through proper channel. Due process of selection was followed and he was allotted Driver No.122-B. On 1.6.1979, the services of the petitioner were terminated

on the allegation that he was absent from duty. The petitioner raised an industrial dispute and the Labour Court passed an award in his favour on 15.1.1981 holding that the order of his termination was illegal as it did not comply with the provisions of Section 25F of the Industrial Disputes Act, 1947 (for short "the Act"). Accordingly, the Labour Court directed the reinstatement of petitioner with continuity of service and full back wages. The respondent-Corporation challenged the award of the Labour Court in this Court by filing C.W.P. No.4301 of 1981 which was dismissed by a Division Bench of this Court on 5.4.1984 in terms of the order passed in another writ petition i.e. C.W.P. No.4299 of 1981 (Annexures P1 & P2). The petitioner was reinstated in service on 1.6.1984 and attained the age of superannuation on 31.5.2004 (Annexure P3). The service benefits of the petitioner, after retirement, were calculated by reckoning his service with effect from the date of his reinstatement in service i.e. 1.6.1984 despite the award of the Labour Court directing his reinstatement with continuity of service and full back wages. The petitioner served legal notice on 16.5.2005 (Annexure P4). On receipt of legal notice he was granted retiral benefits with effect from 1.6.1979 which is the date when his services were illegally terminated as per the award of the Labour Court. The claim of the petitioner is that his qualifying service is required to be counted from 15.7.1972 when he was appointed on the post of Driver by following a regular selection process.

In response to notice of motion having been issued, the stand of the respondent Nos.1 & 2 is that after his termination on 1.6.1979 the petitioner had withdrawn full amount of contributory provident fund deposited with effect from the date of deduction till his date of termination on 1.6.1979 and failed to deposit the said amount along with interest at the time of his reinstatement on 1.6.1984. It is claimed that the qualifying service of an employee in the Corporation is to be reckoned from the date an employee

starts contributory provident fund. In support of the aforementioned stand, Regulation 6(1) of the Employees Pension/Gratuity and General Provident Fund Regulations, 1992 has been relied upon.

We have heard learned counsel for the parties and are of the view that the stand taken by the respondents is wholly untenable. It is undisputed that the petitioner was appointed as Driver on 15.7.1972 after following dur process of selection. The termination of his services was declared illegal and violative of Section 25F of the Act by the Labour Court in its award dated 15.1.1981. The Labour Court had further directed reinstatement of the petitioner with continuity of service and full back wages. The award passed by the Labour Court was upheld by this Court in C.W.P. No.4301 of 1981 filed by the respondent-Corporation and the petitioner attained superannuation on 31.5.2004 after having been reinstated on 1.6.1984.

The reliance of the respondent-Corporation on Regulation 6(1) of the Regulations is wholly misplaced because it does not deal with the situation where an employee after termination of his service withdraws the contributory provident fund. It deals with the situation where the employee has not started depositing his contributory provident fund and the qualifying service is to count from that date. In the present case, it is not disputed that the petitioner had started contributing from 15.7.1972 and it is a different matter that he after termination of his service had to withdraw his contributory provident fund. Therefore, we find no substance in the arguments based on Regulation 6(1) of the Regulations. Moreover, it is not even the plea put forward in the impugned order dated 1.2.2006 (Annexure P5).

For the reasons stated above, this petition succeeds. The order dated 1.2.2006 (Annexure P5) is quashed. A direction is given to the respondents to reckon the service of the petitioner from 15.7.1972 and grant him full benefit. The amount of contributory provident fund with interest, if

any, shall be adjusted while calculating the benefit. The petitioner shall be entitled to costs which we quantify at Rs.5,000/-. The needful shall be done by redetermining the retiral benefits within a period of two months from the date of receipt of certified copy of this order.

Petition stands disposed of in above terms.

(M.M.KUMAR)
Judge

March 22, 2007 **(RAJESH BINDAL)**
dkb **Judge**